



City of Roanoke Invitation to Bid

Date: _____, 2005

Bid Number: 05-03-07 Recycling Containers		Bid Opening Date: April 26, 2005		
		Bid Opening Time: 2:00 p.m.		
«Vendor_Name» «Vendor_ContactName» «Vendor_Address» «Vendor_City» «Vendor_State» «Vendor_Zip»				
Legal Name of Bidder:				
Mailing Address:				
Terms:				
Delivery:				
Telephone:		E-mail:		
Acknowledge each addendum received:	# Date	# Date	# Date	# Date
Printed name of authorized person submitting bid:				
Signature:		Date:		
Issued by:	City of Roanoke Purchasing Division Noel C. Taylor Municipal Building 215 Church Ave SW, Room 353 Roanoke, VA 24011	Vincent Greenan, Senior Buyer Phone: 540-853-5646 Fax: 540-853-1513 Email: vincent.greenan@roanokeva.gov		

THIS PUBLIC BODY DOES NOT DISCRIMINATE AGAINST FAITH BASED ORGANIZATIONS

No bid may be withdrawn within a period of sixty (60) days after bid opening except for clerical errors, part (i) of Section 2.2-4330(A), Virginia Code, 1950, as amended.

The City reserves the right to cancel or reject any or all bids and to waive any informalities in any bid.

This Invitation to Bid consists of these parts:

1. Specifications/Instruction for Bidders
2. Bid Form (Attachment A)
3. Sample Contract (Attachment B)

SPECIFICATIONS FOR BID

SECTION 1. PURPOSE.

The purpose of this Invitation to Bid is to acquire plastic recycling bins for the use by the City of Roanoke to collect and recycle materials for environmentally practical purposes.

SECTION 2. SCOPE OF SERVICES.

The following are the services and/or items that the Successful Bidder will be required to provide to the City:

Contractor shall supply 500 individual rectangular recycling bins. The dimensions shall be as close to Length 19", Width 16", and Height 21" as possible. The color shall be Forest Green. The "Recycling" logo shall be displayed in white on the two long sides along with the words "City of Roanoke". Handles shall be molded into the unit and located one on each of the short sides of the bin. A six number accountability system shall be required which shall be attachable via an adhesive laminated paper label to each container, located by one of the handles. This series of numbers will be assigned and the label attached by the manufacturer. Its purpose is to allow the City to track the location of each bin to a particular City location. Minimum two drain holes shall be required on the bottom of the bin. No lids are required or allowed.

SECTION 3. TERM OF CONTRACT.

- 3.1 The term of the resultant Contract will be for 90 days after receipt of fully executed contract or notice to proceed.
- 3.2 All terms and conditions shall remain in force for the term of the contract unless modified by mutual agreement of both parties.
- 3.3 General and/or technical questions regarding the Scope of Services and/or project requirements under this Invitation to Bid may be directed to Vincent Greenan, Senior Buyer, at (540) 853-2871, or faxed to (540) 853-1513.

SECTION 4. PAYMENT FOR SERVICES.

Payments to the Successful Bidder shall be made within 30 days after receipt of invoice and approval of such invoice by the City.

SECTION 5. GENERAL INSTRUCTIONS TO BIDDERS.

- A. Sealed Bids, to be considered, must be received by the City of Roanoke in the Purchasing Division, 215 Church Avenue, S.W., Noel C. Taylor Municipal Building, Room 353, Roanoke, Virginia 24011, before 2:00 p.m., local time, on April 26, 2005, at which time all bids received will be publicly opened and read. Bids received at 2:00 p.m. or later will not be accepted or considered. The time of receipt shall be determined by the time clock stamp in the Purchasing Office, or if it is not working, such time shall be determined by the Purchasing official who is to open the bids.

The mailed envelope shall be clearly marked on the front of that envelope, the notation and completed information as follow: **"Sealed Bid Number: _____"**

Opening Date: _____ and Time: _____
(Bidder to insert correct date) (Bidder to insert correct time)

FAXED OR E-MAILED BIDS ARE NOT ACCEPTABLE.

- B. If you download this ITB from the City website, and intend to submit a bid, you must notify Purchasing that you should be added to the list of entities having received a copy of the ITB and want to receive any addenda issued. The City is not responsible for any ITB obtained from any source other than the City, and may not accept bids from those who fail to notify the City of their intent to submit a bid. Contact Purchasing by phone at 540.853.2871, by fax at 540.853.1513 or by email at purchasing@roanokeva.gov.**
- C. Payment terms and delivery date(s) must be shown on the submitted bid, if applicable.
- D. All bids are to be submitted in accordance with all terms, conditions, rules, regulations, requirements and specifications identified in and by this Invitation to Bid (ITB).
- E. Bids are to be on the Form as provided by or as otherwise specified in this ITB. If a Bid Form is provided, no changes are to be made to the Bid Form. Any changes to Bid amounts must be initialed.
- F. All bids shall be signed by a person on behalf of the responding Bidder who is appropriately authorized to do so. The printed name of that authorized person must be shown as well. Any bid submitted must be submitted in the complete legal name of the Bidder responding. No bid will be considered from any Bidder not properly licensed as may be required by law.
- G. Bids that have been appropriately opened cannot be changed, adjusted, corrected or modified in any way other than complete withdrawal. The City's procedures for withdrawal of bids (whether construction or other than construction) is that set forth in Code of Virginia §2.2-4330 which allows withdrawal of a bid due to an error such as an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid. Withdrawal must be requested within two days of the bid opening by delivering to the City original work papers, documents, and materials used in preparation of the Bid.
- H. All bids, appropriately received, will be evaluated by considering the requirements set forth in the ITB, the quality, workmanship, economy of operation, suitability for intended purpose, delivery, payment terms and price of product or service being requested in this bid.
- I. Bids are to be submitted on the brand, make and kind of product or service requested or its approved equal, to be solely determined by the City, unless otherwise specified. Should a bid be for a product or service as an equal, the name, make, model and type of that which is being bid must be clearly stated. The bid must also be accompanied by descriptive literature of the product or service bid to allow for evaluation. Failure to provide this information may result in the bid being considered non-responsive and may not be considered.

- J. If an award is made for the item(s) or services requested, a notice of award will be made which will be posted to a file in the City's Purchasing Division, Room 353, telephone no. 540-853-2871, and notification of such award will be made available for Public view in the lobby of the Noel C. Taylor Municipal Building, 215 Church Ave., S.W., Roanoke, VA. 24011. Purchase Orders, when awarded to the Successful Bidder(s), will be issued and sent to the address shown on their bid response. Upon completion of the purchase order, payment will be made only to the Successful Bidder at the address as shown on the purchase order. If the remittance address is other than the address on the bid, it must be clearly noted and explained in your bid. Purchase Order(s) will be paid only when the items and/or services have been supplied to and approved by the City.
- K. All items, identified in this Invitation to Bid, are to be quoted and provided **F.O.B. DESTINATION-INSIDE DELIVERY.**
- L. The City reserves the right to cancel or reject any or all bids, to waive any informalities in any bid and to purchase any whole or part of the items or services listed in the ITB.
- M. It is the policy of the City of Roanoke to maximize minority and women-owned business enterprises participating in all aspects of City contracting opportunities.
- N. **The attention of each Bidder is directed to VA Code 54.1-1100 et seq. which requires certain licenses for contractors, tradesmen and others. Each Bidder is required to determine which license, if any, it is required to have under such sections. Each Bidder shall so state on the Bid Form or in its response, if no Bid Form is provided, whether it has a VA license under such sections and, if so, the type of license and/or license number.**
- O. **Bid Submittals shall include:**
1. **Page 1, Invitation to Bid Coversheet**
 2. **Page 8, The Bid Form (Unit Price shall include all labor, material, overhead and profit.)**

Failure to do so may result in the bid being determined as nonresponsive.

Questions or concerns may be addressed by contacting the Purchasing Division at (540) 853-2871. Reply To:

**City of Roanoke Purchasing Division
Noel C. Taylor Municipal Building
215 Church Avenue SW, Room 353
Roanoke, Virginia 24011**

SECTION 6. EVALUATION FOR LOWEST RESPONSIVE AND RESPONSIBLE BIDDER.

To determine the lowest responsive and responsible bidder with respect to this Bid, the following factors, among such others as will protect and preserve the interest of the City may be considered:

- A. Total extended bid price as set forth on the Bid Form;
- B. The specified terms and discounts of the Bid;
- C. The ability, capacity and skill of the Bidder to perform the contract or provide the service required;
- D. Whether the Bidder can perform the Contract or perform the service promptly, or within the time specified, without delay or interference;

- E. The character, integrity, reputation, judgment, experience and efficiency of the Bidder;
- F. The quality of performance of previous contracts or services;
- G. The previous and existing compliance by the Bidder with laws and ordinances relating to the Contract, purchase or service;
- H. The equipment and facilities available to the Bidder to perform the Contract or provide the services and/or items;
- I. The sufficiency of the financial resources and ability of the Bidder to perform the Contract or provide the services and/or items;
- J. The quality, availability and adaptability of the supplies, materials, equipment or services to the particular use required;
- K. The ability of the Bidder to provide future maintenance, parts and service for the use of the subject of the purchase or Contract;
- L. The conditions, if any, of the bid;
- M. Bids shall be evaluated based on the requirements set forth in this Invitation to Bid, and other criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, suitability for a particular purpose and life cycle cost. The City, in its sole discretion, may elect to waive an informality in any Bid.

SECTION 7. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED.

The following applies to the Successful Bidder:

1. During the performance of the contract, the Successful Bidder agrees as follows:
 - a. The Successful Bidder will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Successful Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The Successful Bidder, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
2. The Successful Bidder will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over ten thousand dollars (\$10,000.00), so that the provisions will be binding upon each subcontractor or vendor.

SECTION 8. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR.

All public bodies shall include in every contract over ten thousand dollars (\$10,000.00) the following provisions:

The following applies to the Successful Bidder:

During the performance of the contract, the Successful Bidder agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Successful Bidder's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by

or on behalf of the Successful Bidder that the Successful Bidder maintains a drug free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over ten thousands dollars (\$10,000.00), so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, a drug free workplace means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

SECTION 9. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE.

Successful Bidder, and any of its subcontractors, shall, at its sole expense, obtain and maintain during the life of the resulting Contract the insurance policies and/or bonds required. Any required insurance policies and/or bonds shall be effective prior to the beginning of any work or other performance by successful Bidder, or any of its subcontractors, under any resultant Contract. The policies and coverages required are those as may be referred to in the sample contract and/or the terms and conditions attached to this ITB, but shall include workers' compensation coverage regardless of the number of employees.

SECTION 10. NEGOTIATIONS WITH LOWEST RESPONSIVE AND RESPONSIBLE BIDDER.

If the bid by the lowest responsive and responsible bidder exceeds available funds, the City reserves the right to negotiate with the apparent low bidder pursuant to §2.2-4318 Code of Virginia. The conditions and procedures under which such negotiation may be undertaken are that the appropriate City officials shall determine that the lowest responsive and responsible bid exceeds available funds and notify such bidder in writing of its desire to negotiate. Thereafter, negotiations with the apparent low bidder may be held to obtain a contract within available funds involving discussions of reduction of quantity, quality, or other cost saving mechanisms. Any such negotiated contract shall be subject to final approval of the City, in the sole discretion of the City.

SECTION 11. BID AWARD.

If an award of a contract is made, it will be made to the lowest responsive and responsible Bidder and notice of the award or the announcement of the decision to award will be made by posting a notice of such award or announcement in the foyer area of the 2nd Floor of the Noel C. Taylor Municipal Building at 215 Church Avenue, S.W., Roanoke, Virginia 24011.

SECTION 12. FAITH BASED ORGANIZATIONS.

Pursuant to Virginia Code Section 2.2-4343.1, be advised that the City does not discriminate against faith-based organizations.

SECTION 13. HOLD HARMLESS AND INDEMNITY.

Successful Bidder shall indemnify and hold harmless the City and its officers, agents, and employees against any and all liability, losses, damages, claims, causes of action, suits of any nature, costs, and expenses, including reasonable attorney's fees, resulting from or arising out of Successful Bidder's or its employees, agents, or subcontractors actions, activities, or omissions, negligent or otherwise, on or near City's property or arising in any way out of or resulting from any of the work or items to be provided under the Contract, and this includes, without limitation, any fines or penalties, violations of federal, state, or local laws or regulations, personal injury, wrongful death, or property damage claims

or suits. Successful Bidder agrees to and shall protect, indemnify, and hold harmless all the parties referred to above from any and all demands for fees, claims, suits, actions, causes of action, settlement or judgments based on the alleged or actual infringement or violation of any copyright, trademark, patent, invention, article, arrangement, or other apparatus that may be used in the performance of the Agreement.

SECTION 14. PROTESTS.

Any Bidder who wishes to protest or object to any award made or other decisions Pursuant to this ITB may do so only in accordance with the provisions of Sections 2.2-4357, 4358, 4359, 4360, 4363, and 4364 of the Code of Virginia, and only if such is provided for in such Code section.

SECTION 15. INFORMATION ON AGREEMENT TO BE AWARDED.

The Sample Agreement marked as Attachment B to ITB No. 05-03-07 contains terms and conditions that the City plans to include in any agreement that may be awarded, but such terms and conditions may be changed, added to, deleted, or modified as may be agreed to between the City and the Successful Bidder. However, if a Bidder has any objections to any of the terms or conditions set forth in the Sample Agreement or any changes or additions thereto that the Bidder wants to discuss before submitting a bid, the Bidder should set forth such objections, changes, or additions in written correspondence to the Purchasing Division at least five (5) days before the bid opening date for this ITB. Otherwise, submission of a bid by a Bidder will obligate such Bidder, if it is the Successful Bidder, to enter into an agreement containing the same or substantially similar terms and conditions as contained in such Sample Agreement.

(Remainder of page intentionally left blank)

ATTACHMENT A

To

ITB #05-03-07

BID FORM

<u>Item</u>	<u>Quantity</u>	<u>U/M</u>	<u>Unit Price</u>	<u>Extended Price</u>
Recycling Bin	500	ea.	\$ _____	Total \$ _____

Bids containing any conditions, omissions, unexplained erasures, alterations or items not called for in the bid, or irregularities of any kind, may be rejected by the City as being nonresponsive. No changes are to be made to the Bid Form. Any changes to a Bid Amount must be initialed by the person signing the Bid Form.

The attention of each Bidder is directed to VA Code sections 54.1-1100, et seq. which requires certain licenses for contractors, tradesmen, and others. Each Bidder is required to determine which license, if any, it is required to have under such sections. Complete the following:

Bidder ____ does have ____ does not have a Virginia Contractor's License. (Check appropriate block)

If Bidder has a Virginia Contractor's License, circle the class Bidder has and list the number. Licensed "Class A", "Class B", or "Class C" Virginia Contractor Number _____

If Bidder has another type of Virginia License, please list the type and number:

Type of license _____ and number: _____.

Bidder is a __ resident or __ nonresident of Virginia. (Check appropriate blank. See VA Code sections 54.1-1100, et seq.

The undersigned hereby agrees, if this bid is accepted by the City, to provide the services and/or items in accordance with this Invitation to Bid and to execute a contract for such services and/or items.

Legal Name of Bidder

Date

Authorized Signature

Print or Type Name and Title

ATTACHMENT B

To

ITB #05-03-07

REFERENCE ITB/RFP#05-03-07

THIS AGREEMENT ("Agreement") is made and entered into the ____ day of _____, ____ by and between the **CITY OF ROANOKE** ("City"), and _____ ("Contractor").

For and in consideration of the mutual promises set forth in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION 1. TERM:

The term of this Agreement shall be for ninety (90) days from _____ until _____, subject to the termination rights of the parties as set forth in this Agreement.

SECTION 2. TERMINATION:

The City may terminate this Agreement, for convenience, on thirty (30) days written notice to Contractor. Upon failure of Contractor to perform in accordance with this Agreement, the city may, upon five (5) days written notice, terminate this Agreement. Upon written notice to terminate, Contractor shall immediately discontinue all work (unless the notice directs otherwise) and deliver to City all of City's property. Upon return of City's property, Contractor shall be entitled to be paid for work satisfactorily completed in accordance with the payment terms of this Agreement.

SECTION 3. SCOPE OF WORK:

Contractor shall supply 500 individual rectangular recycling bins. The dimensions shall be as close to Length 19", Width 16", and Height 21" as possible. The color shall be Forest Green. The "Recycling" logo shall be displayed in white on the two long sides along with the words "City of Roanoke". Handles shall be molded into the unit and located one on each of the short sides of the bin. A six number accountability system shall be required which shall be attachable via an adhesive laminated paper label to each container, located by one of the handles. This series of numbers will be assigned and the label attached by the manufacturer. Its purpose is to allow the City to track the location of each bin to a particular City location. Minimum two drain holes shall be required on the bottom of the bin. No lids are required or allowed.

SECTION 4. LUMP SUM COMPENSATION:

The City agrees to pay Contractor for Contractor's complete and satisfactory performance of the Work, in the manner and at the time set out in this Agreement, the lump sum amount of \$

_____ within thirty (30) calendar days after delivery and acceptance of the Work by City. City retains the right of setoff as to any amounts of money Contractor may owe City. Payment will be made within thirty (30) days after receipt and acceptance of the items by City.

SECTION 5. INSURANCE:

Neither the Contractor nor any subcontractor shall commence work under this Contract until the Contractor has provided proof of the required insurance under this Section from the contractor each and every sub-contractor, and that such insurance has been approved by the City.

- 1) For All Contracts, the following minimum insurance requirements apply:
 - a. Workers' Compensation and Employers' Liability:
The Contractor shall obtain and maintain the following limits:
Workers' Compensation: Statutory
Employers' Liability: \$100,000 bodily injury by accident each occurrence \$500,000 bodily injury by disease (policy limit), \$100,000 bodily injury by disease each employee
 - b. Commercial General Liability:
\$1,000,000 general aggregate
\$1,000,000 products/completed operations aggregate
\$1,000,000 personal and advertising injury
\$1,000,000 each occurrence
Coverage is to be written on an "occurrence" basis and such coverage shall include broad form extension endorsements for both liability and property damage.
Completed Operations coverage will be required to be maintained for the life of the Contract.
 - c. Automobile Liability:
Limits for vehicles owned, non-owned or hired or borrowed shall not be less than: \$1,000,000 Limit per occurrence
 - d. Umbrella Liability:
Umbrella coverage may be used to satisfy the previous insurance requirements. An insurance endorsement shall be received by the city stating that the umbrella coverage applies to the specific policies and follows form of the primary coverage.
- 2) Term: Insurance shall remain in effect until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective work.
- 3) Limit of Liability: Nothing contained in these insurance requirements is to be construed as limiting the liability of Contractor or Contractor's insurance carriers. Owner does not in any way represent that the coverages or the limits of insurance specified are sufficient or adequate to protect Contractor's interests or liabilities, but are merely minimums. The obligation of the Contractor to purchase insurance herein shall not in any way limit the obligation of the Contractor in the event that the Owner should suffer an injury or loss in excess of the amount recoverable through insurance.
- 4) Proof of Insurance Coverage: The policies of insurance required shall be purchased from a reputable insurer licensed to do business in Virginia and maintained for the life of the Contract by the Contractor. Other insurance requirements include the following:
 - a. The Contractor shall furnish the City with the required Certificates of insurance showing the insurer, type of

Insurance, policy number, policy term, and the Amount insured for property coverages and the limits for liability coverages.

b. The required certificates of insurance shall have the "will endeavor to" wording deleted or contain substantially the following statement: "The insurance covered by this certificate shall not be canceled or materially altered except after a thirty (30) day written notice has been received by the Risk Management Officer for the City of Roanoke."

c. The required certificates of insurance shall name the City of Roanoke, its officers, agents, volunteers, and employees as additional insureds except with regard to the workers' compensation and employers' liability coverage's. All coverage's shall contain a waiver of subrogation in favor of the City. Additional insured and waiver endorsements shall be received by Roanoke Risk Management from the insurer within thirty (30) calendar days of the beginning of this contract.

SECTION 6. INDEMNIFICATION:

Contractor shall indemnify and hold harmless the City and its officers, agents, and employees against any and all liability, losses, damages, claims, causes of action, suits of any nature, costs, and expenses, including reasonable attorney's fees, resulting from or arising out of Successful Bidder's or its employees, agents, or subcontractors actions, activities, or omissions, negligent or otherwise, on or near City's property or arising in any way out of or resulting from any of the work or items to be provided under the Contract, and this includes, without limitation, any fines or penalties, violations of federal, state, or local laws or regulations, personal injury, wrongful death, or property damage claims or suits. Successful Bidder agrees to and shall protect, indemnify, and hold harmless all the parties referred to above from any and all demands for fees, claims, suits, actions, causes of action, settlement or judgments based on the alleged or actual infringement or violation of any copyright, trademark, patent, invention, article, arrangement, or other apparatus that may be used in the performance of the Agreement.

SECTION 7. REGULATIONS:

Contractor shall fully comply with all local, state, and federal ordinances, laws, and regulations.

SECTION 8. EQUAL EMPLOYMENT OPPORTUNITY (NON-DISCRIMINATION):

During the performance of this Agreement, Contractor agrees as follows:

- A. Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, will state that Contractor is an equal opportunity employer.
- C. Contractor will include the provisions of the foregoing subsections (a) and (b) in every contract or purchase order of over ten thousand dollars and no cents (\$10,000.00) so that the provisions will be binding upon each contractor or vendor.

SECTION 9. DRUG-FREE WORKPLACE:

During the performance of this Agreement, Contractor shall: (i) provide a drug-free workplace for Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over ten thousand dollars and no cents (\$10,000.00) so that the provisions will be binding upon each subcontractor or vendor. For the purpose of this section, "drug-free workplace" means a site for the performance of work done in connection with this Agreement.

SECTION 10. FAITH-BASED ORGANIZATIONS:

Pursuant to §2.2-4343.1 of the Code of Virginia (1950), as amended, the City of Roanoke does not discriminate against faith-based organizations.

SECTION 11. NEGOTIATION:

This Agreement has been fully negotiated by and between the parties and shall be construed as if both parties had an equal responsibility in the drafting hereof.

SECTION 12. ENTIRE AGREEMENT:

This Agreement represents the entire integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement shall not be amended or modified except by written instrument signed by the parties.

SECTION 13. SUCCESSORS AND ASSIGNS:

Except as otherwise specifically provided herein, the terms and provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the successors and assigns of the parties.

SECTION 14. NO WAIVER OF TERMS OF AGREEMENT:

No failure of any party to insist upon strict observance of any provision of this Agreement, and no custom or practice of the parties at variance with the terms hereof, shall be deemed a waiver of any provision of this Agreement in any instance.

SECTION 15. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

SECTION 16. CONSIDERATION SUBJECT TO FUNDING:

All funds for payments by the City under this Agreement are subject to the availability of an annual appropriation for this purpose by the City Council of the City of Roanoke. In the event of non

appropriation of funds by the City Council of the City of Roanoke for the goods or services provided under this Agreement or substitutes for such goods or services which are as advanced or more advanced in their technology, the City will terminate this Agreement, without termination charge or other liability of the City, on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this Agreement is spent, whichever event occurs first. If funds are not appropriated at any time for the continuance of this Agreement, cancellation will be accepted by Contractor or on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the City Council of the City of Roanoke shall not be obligated under this Contract beyond the date of termination.

SECTION 17. RELATIONSHIP TO OTHER PARTIES:

It is not intended by any of the provisions of any part of this Agreement to confer a benefit upon any other person or entity not a party to this Agreement or to authorize any person or entity not a party to this Agreement to maintain a suit pursuant to the terms or provisions of this Agreement, including, without limitation, any claim or suit for personal injuries, property damage or loss of profits or expenses.

SECTION 18. NO THIRD PARTY BENEFICIARY:

The provisions of this Agreement are for the exclusive benefit of the parties hereto and not for the benefit of any third person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person unless otherwise expressly provided for herein.

SECTION 19. FORUM SELECTION AND CHOICE OF LAW:

By virtue of entering into this Contract, Contractor submits itself to a court of competent jurisdiction in the City of Roanoke, Virginia, and further agrees that this Contract is controlled by the laws of the Commonwealth of Virginia and that all claims, disputes, and other matters shall only be decided by such court according to the laws of the Commonwealth of Virginia.

SECTION 20. OWNERSHIP:

Ownership of all data, materials, and documentation originated and prepared for the City pursuant to the ITB shall belong exclusively to the City and be subject to public inspection in accordance with the Virginia Freedom of Information Act.

SECTION 21. FORCE MAJEURE/IMPOSSIBILITY:

- A. Notwithstanding the foregoing, if, by reason of Force Majeure, City is unable to perform or observe any agreement, term or condition of this Agreement which would give rise to a default by City of any obligation under this Agreement, City shall not be deemed in default during the continuance of such inability or due to such inability.
- B. The term "Force Majeure" shall mean: acts of God; strikes; lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the Commonwealth or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; environmental problems; fires; hurricanes; tornados; storms; droughts; floods; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; shortages of

labor, materials, supplies or transportation; any property on which work is to be done being too wet to allow work to be done on it; or any cause or event not reasonably within the control of the City.

SECTION 22. CAPTIONS AND HEADINGS:

The section captions and headings are for convenience and reference purposes and shall not affect in any way the meaning or interpretation of this Agreement.

SECTION 23. NOTICE:

Any notice, request, or demand given or required to be given under this Agreement shall, except as otherwise expressly provided herein, be in writing and shall be deemed duly given only if delivered personally or sent by certified mail, return receipt requested to the addresses stated below.

To the City:

City Manager
Room 364, Noel C. Taylor Municipal Building
215 Church Avenue, S. W.
Roanoke, Virginia 24011

To _____:

Notice shall be deemed to have been given, if delivered personally, upon delivery, and if mailed, upon the third business day after the mailing thereof.

Remainder of page intentionally left blank

IN WITNESS WHEREOF, the parties hereto have executed the same as of the day and year first hereinabove written:

ATTEST/WITNESS:

CITY OF ROANOKE

By _____
Printed Name and Title

By _____
Printed Name and Title

ATTEST/WITNESS:

By _____
Printed Name and Title

By _____
Printed Name and Title

Approved as to Form:

Appropriation and Funds Required
For This Agreement Certified

Assistant City Attorney

Director of Finance

Approved as to Execution:

Acct # _____

Assistant City Attorney